

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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CC Docket No. 97-21

In the Matter of

Changes to the Board of
Directors of the National Exchange
Carrier Association, Inc.

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COMMENTS OF WORLDCom

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January 27, 1997

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SUMMARY

WorldCom urges the Commission to conclude that NECA's proposed change in its Board of Directors is not nearly sufficient enough to render NECA an impartial, neutral third-party eligible for appointment as either the temporary or permanent administrator of the federal universal service programs. As the Federal-State Joint Board on Universal Service correctly concluded in its Recommended Decision, a neutral third party administrator should be selected to administer the new universal service system, an administrator not associated or affiliated with any particular industry segment or provider. This is especially the case given the newly-competitive environment engendered by the Telecommunications Act of 1996, and the fact that ILECs soon will be competing outside their traditional markets with IXC's and other entities that will contribute to, and receive, universal service funding. The Joint Board is also correct that NECA as presently constituted does not meet the four-part neutrality test proposed in the Recommended Decision.

WorldCom believes that NECA's limited proposal to expand its Board of Directors completely fails all aspects of the Joint Board's four-part neutrality test, and hence any concomitant eligibility for a role as temporary administrator of universal service mechanisms. In particular, NECA's proposal alone cannot render that organization hospitable to any interests except those of the ILECs. NECA must, at minimum, allow all industry segments to be fully and fairly represented in the membership, the professional staff, and the Board, so that the ILECs no longer have a controlling position in the organization. Without these types of fundamental structural changes, NECA's proposal does not begin to satisfy the Joint Board's criteria for an impartial administrator that welcomes significant and meaningful representation of non-ILEC interests.

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COMMENTS OF WORLDCOM

WorldCom, Inc. ("WorldCom")¹ hereby files its comments in response to the Notice of Proposed Rulemaking ("Notice") released by the Commission on January 10, 1997 in the above-captioned proceeding.

I. INTRODUCTION

The National Exchange Carrier Association ("NECA") was established by the Commission in 1983 to administer the interstate access tariff and revenue distribution processes. That role eventually grew to encompass administration of the existing universal service high cost fund, the Lifeline Assistance program, the long term support ("LTS") program, and the interstate Telecommunications Relay Service ("TRS") fund. At present, NECA has an exclusive membership comprised solely of incumbent local exchange carriers ("ILECS"), and its fifteen member Board of Directors is controlled exclusively by its ILEC membership.

Last October, as the Federal-State Joint Board on Universal Service was in the midst of debating whether to recommend appointing NECA as the temporary administrator of the new universal service support mechanism, NECA submitted a letter to the Commission

¹ WorldCom was formerly LDDS WorldCom and MFS Communications, Inc. These two companies completed a merger on December 31, 1996.

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proposing interim changes in NECA's governing structure that are designed to "broaden support for NECA's appointment as interim administrator of the Universal Service Fund."² NECA proposes as an interim measure to add six members to its current Board of Directors, three of whom would represent non-ILECs such as interexchange carriers ("IXCs"), wireless carriers, and competitive LECs, and three of whom would represent non-carrier beneficiaries of the fund, such as schools, libraries, and the states.³

Subsequent to NECA's submission of its letter to the FCC, the Joint Board issued its Recommended Decision on November 8, 1996 recommending that NECA be appointed as temporary administrator only after NECA has added "significant, meaningful representation for non-incumbent LEC carrier interests to the NECA Board of Directors."⁴ The Joint Board recommended against appointing NECA as permanent administrator of the universal service support mechanisms "at this time," noting that a number of parties, including WorldCom, seriously questioned NECA's "ability to appear as a neutral administrator among contributing carriers."⁵

² Letter from Bruce W. Baldwin, President, NECA, to Reed Hundt, Chairman, FCC, dated October 18, 1996, at 1 ("NECA Letter"). Of course, WorldCom would note that attempting to "broaden support" is very different from actually achieving impartiality.

³ NECA Letter at 2.

⁴ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, FCC 96J-3, released November 8, 1996, at para. 833 ("Recommended Decision").

⁵ Recommended Decision at para. 832.

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On January 10, 1997, the Commission issued its Notice seeking comments on NECA's Letter. In particular, the Commission tentatively concludes that, in order for NECA to be appointed as temporary administrator, the composition of its Board of Directors must be altered to make the Board "more representative of all segments of the telecommunications industry."⁶ The Commission also asks whether NECA's proposal will satisfy the Joint Board's recommended criteria for a temporary administrator.⁷ The Notice observes that the separate question of whether NECA will be appointed interim administrator will be determined by the Commission in the context of the record already developed in the universal service proceeding.⁸ Moreover, the issue of whether NECA can become a neutral third party eligible for selection as permanent administrator of the universal service fund will be considered in a separate Notice of Inquiry in this proceeding.⁹

II. THE PROPOSED MODEST CHANGE TO THE COMPOSITION OF NECA'S BOARD OF DIRECTORS IS NOT NEARLY SUFFICIENT TO RENDER NECA A NEUTRAL THIRD PARTY ELIGIBLE TO SERVE AS ADMINISTRATOR OF THE FEDERAL UNIVERSAL SERVICE PROGRAMS

Almost all parties in the FCC's universal service proceeding agreed that a neutral third party administrator should be selected to administer the new universal service system. In

⁶ Notice at para. 11.

⁷ Notice at para. 13.

⁸ Notice at para. 10 n.43.

⁹ Notice at para. 3.

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addition, commenters stressed that it is crucial that the administrator not be associated or affiliated with any particular industry segment or provider. While some parties claimed that NECA should assume the new administrator position, WorldCom explained in its own comments that NECA simply is not a truly neutral third party administrator because it is an organization comprised solely of incumbent LECs that, both traditionally and by design, has represented only the viewpoint and interests of ILECs.¹⁰ WorldCom argued that the newly-competitive environment engendered by the Telecommunications Act of 1996 will require appointing a fund administrator which is completely even-handed, in both appearance and reality. WorldCom urged the Joint Board to recommend the selection of an entity with absolutely no pecuniary or institutional interest in the universal service monies that it will collect and disburse, nor any special ties to one group or type of contributors or recipients.¹¹

NECA filed comments in the FCC's universal service proceeding nominating itself for the job of administrator of the fund. As WorldCom pointed out to the Joint Board, however, NECA's comments at the same time also recommended the adoption of specific policy proposals, including maintaining existing universal service programs and using a revenue-based payment methodology.¹² The fact that NECA, while arguing to be a neutral third party, saw fit to

¹⁰ See Comments of LDDS WorldCom, CC Docket No. 96-45, filed April 12, 1996, at 19-20.

¹¹ Id.; see also Reply Comments of MFS Communications, CC Docket No. 96-45, at 8-9 (Organization representing small LECs likely cannot administer universal service program in a neutral manner).

¹² Comments of NECA, CC Docket No. 96-45, filed April 12, 1996, at 19-23.

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participate actively in that policymaking proceeding certainly is reason enough to call into serious question its neutrality and independence.¹³

The Joint Board adopted much of WorldCom's reasoning and proposed four specific criteria that any candidate must meet in order to be selected as permanent administrator of the universal service program. The administrator must: (1) be neutral and impartial; (2) not advocate specific positions to the Commission in non-administration-related proceedings; (3) not be aligned or associated with any particular industry segment; and (4) not have a direct financial interest in the support mechanisms established by the Commission.¹⁴ The Joint Board concluded that NECA, as presently constituted, does not meet this criteria. WorldCom subsequently filed comments with the Commission strongly supporting the Joint Board's recommended criteria and conclusion on this point.¹⁵

The Notice notes that the final decision of whether to appoint NECA as interim administrator of the universal service funds is not the subject of this particular proceeding. It is painfully obvious, however, that NECA's proposed expansion of its Board of Directors completely fails the Joint Board's four-part test, and hence any concomitant eligibility for a role as temporary administrator. Indeed, the Commission suggests as much when it queries in the

¹³ Reply Comments of LDDS WorldCom, CC Docket No. 96-45, filed May 7, 1996, at 19-20.

¹⁴ Recommended Decision at para. 830.

¹⁵ Comments of LDDS WorldCom, CC Docket No. 96-45, filed December 19, 1996, at 42.

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Notice whether NECA's proposal is "consistent with assuring significant, meaningful representation of non-incumbent LEC interests," given that

ten Board members would continue to represent incumbent LEC interests, the five outside directors would continue to be selected by the ten incumbent LEC directors, and incumbent LEC interests, therefore, would account for more than 71% of the Board's total composition.¹⁶

To ask the question in this manner is to answer it at the same time.

WorldCom cannot see how the NECA proposal, modest as it is, can hope to render that organization hospitable to any interests except those of the ILECs. Even to serve as temporary administrator, NECA must, at minimum, take dramatic and irreversible steps to completely balance its Board of Directors, and its full membership, with non-ILEC interests. As a start, full voting membership in NECA must be opened up to all interested parties, including IXC's and CLEC's. NECA also must allow all industry segments to be fully and fairly represented on the Board, so that the ILECs no longer have a controlling position in the organization. The professional staff's composition should be altered as well to remove any suggestion of ILEC bias. Without these types of fundamental and far-reaching structural changes, NECA's proposal does not begin to satisfy the Joint Board's criteria for a temporary administrator -- let alone a permanent administrator -- that includes "significant, meaningful representation" of non-ILEC interests.¹⁷

¹⁶ Notice at para. 13.

¹⁷ Recommended Decision at para. 833.

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WorldCom looks forward to participating further in this proceeding by responding more specifically to questions raised in the companion Notice of Inquiry. In the meantime, WorldCom urges the Commission to conclude that NECA's proposed change in its Board of Directors is not nearly sufficient enough to render NECA a neutral third-party eligible for appointment as either the temporary or permanent administrator of the federal universal service programs.

III. CONCLUSION

The Commission should act in accordance with the recommendations proposed above by WorldCom.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Cecelia Y. Johnson, hereby certify that I have this 27th day of January, 1997, sent a copy of the foregoing "Comments of WorldCom" by hand delivery to the following:

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